IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 778 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARADHANABEN JAYANTILAL MEHTA

Versus

STATE OF GUJARAT

Appearance:
MS MAMTA R VYAS for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 3
RULE SERVED for Respondent No. 4
DELETED for Respondent No. 5

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. Ms.M.R.Vyas, learned advocate for the petitioner. M/s. Patel Advocates for the respondent. Mr.Digant Joshi, learned A.G.P. for M/s.Patel Advocates.

#. The present petition is filed by the petitioner seeking the appointment to the post of Dental Technician in the Medical College at Rajkot or any other college. The few facts are important to be noted.

#. The petitioner received her qualification of Dental Mechanic in the year 1994 from the Government Dental College & Hospital, Ahmedabad. The petitioner was under an obligation to submit a bond to the effect that the petitioner shall serve in Government institution for three years anywhere in the State. The petitioner in the year 1995 made an application for giving her an appointment in the medical college, Rajkot, Jamnagar or Bhavnagar. The said application came to be replied by the Joint Director of the Health & Medical Services, Gandhinagar by letter dated 24.8.1995 saying that there is ban on direct recruitment and therefore the petitioner cannot be appointed at present. It was also stated in that letter that there is no vacancy, the letter then proceeded to mention that as and when the Government college will recommend the name of the petitioner she will be appointed. That made the petitioner to wait for favourable reply from the respondent authority but that waiting did not come to an end till date.

#. In the meantime the Government by its notification dated 9.4.1997 framed the Gujarat Civil Services (Reservation of posts for women) Rules - 1997 and declared a 30% reservation of the total unreserved posts in the Government service for women. It is also mentioned by the petitioner that though it was a stand of the Joint Director of the Health & Medical Services that there is no vacancy, one Rajesh Jayantilal Modi was given appointment as Dental Mechanic, in the year 1998. However, that is beside the point so far as the relief which is prayed for is concerned, hence the same is not dealt with. The petitioner once again made an application on 16.9.97 to the authorities praying that the petitioner may be given an appointment to which the petitioner came to be replied by a letter dated 20.9.97

(Annexure-E) that the name of the petitioner appears at Serial No.12 in the list and therefore she cannot be given an appointment. It is important to note that Dental College of Rajkot recommended the name of the petitioner for the appointment as Dental Technician in the college of Rajkot. A copy of that recommendation is at Annexure-F page 22. Though the said letter was addressed to the Additional Commissioner, Medical Education & Research, the same was not responded too in the spirit it ought to have been. The petitioner had no other option then to continue to wait. The petitioner once again made a representation in the year 1998 requesting that taking into consideration the recommendation of the Medical College, Rajkot her case may be considered and she may be given an appointment. Still no action was taken by the respondents, and hence the petitioner is constrained to approach this court by way of this petition.

#. This court issued notice to the respondent on 3.3.1999 and pursuant to that an affidavit is filed by one Shri H.G.Pandya, the Administrative Officer from the office of Additional Director, Medical Services, Gandhinagar. It is stated in the said affidavit that the Medical College at Rajkot, Jamnagar and Bhavnagar are under the administrative control of Additional Director of Medical Education and not under the control of Medical Section, hence the question of giving appointment by Medical Section at this place does not arise. It shows the level of coordination which is prevalent amongst the authorities. It is required to be noted in light of the fact which is mentioned by the Dean of the Government Medical College, Rajkot in its letter dated 9.10.98 (Annexure-F) which shows that the post of Dental Technician is vacant and that it will be in the interest of parties if the post of Dental Technician is filled at the earliest and that the same is most urgent. It is also mentioned in the said letter that the recommendation is made with all available force. It is also mentioned that if the petitioner is fulfilling the requirements, under the prevalent recruitment rules, she may be given at least temporary appointment and if that is done the institution (Government Medical College, Rajkot) has no objection.

#. The affidavit which is pressed into service to submit that the training to Dental Technician is given by the Government only to such candidate who possess the prescribed qualification for the admission to the said training. The candidates who are under going this training and passes the examination at the end of the

training are given the appointment as Dental Technician as per the requirement of the Government, they are bonded candidate (the candidate who have executed the bond in favour of the Government that they undertake to serve the Government for 5 years after they have taken training) and they have to serve Government for 5 years after their appointment. The affidavit is pressed into service to show that the bond is not for giving appointment to the candidates but for giving service to the Government after appointment". It is surprising that on one hand the Government is taking bond from the candidates who are taking training like that of the petitioner and there are number of vacant posts in the Government Hospitals and also in the Government Medical Colleges, and on the other hand the persons like the petitioner are constrained to approach this court by filing the petition seeking appointment.

#. It is stated in the affidavit that the name of the petitioner has been sent for appointment in Medical Department vide letter dated 17.2.1995 of the Dean Government Dental College & Hospital, Ahmedabad. The petitioner is at Serial No.6 in the list. There are two female candidates in this list. One is the petitioner herself and another Kum. Manisha .V.Shah at serial no.1. More over an earlier list of 4 bonded candidates (this court fee/s that there should be some better terminology then "bonded candidates" sent by Dean, Dental College, Ahmedabad vide his letter dated 18.3.1993 which is also pending for issuance of appointments. One candidate is still to be appointed from the list of bonded candidates sent by Dean, Dental College, Ahmedabad vide their letter dated 17.3.1992. In the affidavit list of 11 candidates is set out and in that the name of the petitioner is at Serial No.11, the perusal of the list shows that there is only one more female candidate then the petitoiner and i.e. at Serial no.7. (Shah Manisha Vinodchandra). The petitioner has produced two letters written by the petitoiner dated 17.2.2000 and 23.7.1999 alongwith affidavit in rejoinder at page 51 and 52, addressed to the Commissioner Health and the Additional Chief Secretary Health & Medical Department stating that other female candidate Shah Manish Vinodchandra has already joined the services of Ahmedanad Municipal Corporation at L.G.Hospital - Maninagar and hence her name is required to be cancelled from the said list. It is possible that she also, after having waited for the appointment in Government must have accepted that appointment. Now she may not be ready to join the Government appointment even if it is offered. Now the petitioner is the only female candidate in the whole list and as per their own

affidavit there is a post vacant as mentioned in in para 5 at page 55 of the affidavit "I further say that, in Medical side 13 posts of Dental mechanics have been sanctioned. Out of these 10 posts are filled in and three posts are vacant. Out of three vacant posts two posts are required to be kept vacant under economy policy in Government expenditure and one post is required to be filled in as per Roster Register this post is required to be filled in by SEBC category. There is no SEBC female candidate in the merit list hence this post is required to be filled in by SEBC male candidate and at the third recruitment time female candidate of merit list will be given appointment to non reserve seat".

#. This Court is at loss to find out as to when that third attempt for appointment will be made. Till then the petitioner will be required to continue to wait to get an appointment on a vacant post. This causes serious harassment to the patient who have no other option then to approach the Government Hospitals for their treatment.

#. An affidavit in rejoinder is filed by the petitioner and it is stated there in that the petitioner had applied pursuant to an advertisement for the course in question which had commenced from 1.8.1991 and that after completing the same in the year 1994, she had executed the bond and since then she is waiting for an appointment. Giveing an opportunity to the petitioner to discharge her obligation. The petitioner is not given an appointment for no valid reasons and the petitioner is kept out of job on mere technical grounds. It is equally important interesting to note that economic policy is applied to the service/s like medical service and to the appointment of doctor and technician in the hospital, as if no other avenue way is left for applying the economy policy. It is stated by the petitioner in the affidavit in rejoinder that as per their own say i.e. in the affidavit in reply filed by the respondent that no SC candidate is available either male or female and still the authorities are waiting for an auspicious moment to arrive and then to make third attempt for filling up the post. It is very shocking that the authorities in control of the affairs are behaving in this manner.

##. In view of the aforesaid discussion and observation the present petition is allowed. The respondent no.2 i.e. Commissioner of Health, Health & Medical Services, is directed to consider the case of the petitioner in light of the aforesaid observations for giving the appointment to the petitioner in accordance with law. In the alternative the case of the petitoiner should be

considered for giving her an appointment on temporary or ad hock basis if the respondent is so constrained in view of the post being reserved for SEBC female candidate untill the government undertakes the exercise of third attempt, and is successful in finding out a female candidate from reserved category. The respondent no.2 is directed to complete the process of consideration of the case of the petitioner latest by 15.6.2000. D. S. is permitted. Rule is made absolute.

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